

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, §
§
Plaintiff-Respondent, §
§
v. § CIVIL ACTION NOS. H-05-1562,
JOSE SANTOS RIVERA-ECHAVARRIA, § H-05-2697, and H-05-2977
§ (Criminal No. H-01-897)
§
Defendant-Movant. §

MEMORANDUM OPINION AND ORDER

Pending before the court is the Motion to Dismiss 28 U.S.C. § 2255 Motions as Time-Barred filed by the United States (Docket Entry No. 43 in Crim. No. H-01-897). Rivera-Echavarria has filed three related motions to vacate his sentence under 28 U.S.C. § 2255 (Docket Entry Nos. 29-31,¹ 39-40 in Crim. No. H-01-897). Rivera-Echavarria had one year from the date that his conviction became final to file his § 2255 motions. 28 U.S.C. § 2255(1). Rivera-Echavarria's conviction became final on April 21, 2003, when the United States Supreme Court denied his petition for writ of certiorari (Docket Entry No. 28 in Crim. No. H-01-897). He therefore had until April 20, 2004, to file a § 2255 motion.

¹Rivera-Echavarria's Original Petition was filed in the Eastern District of Texas. After it was transferred to this court, it was assigned to the undersigned judge. (Transfer Order, Docket Entry No. 8 in Civil Action No. H-05-1562).

Rivera-Echavarria did not meet that deadline; all of his motions were filed in 2005. Rivera-Echavarria signed his first motion, which did not specify any grounds for relief, on March 29, 2005 (Docket Entry No. 29 in Crim. No. H-01-897). Rivera-Echavarria signed his last two motions on July 28, 2005 (Docket Entry Nos. 31 and 39 in Crim. No. H-01-897). Although Rivera-Echavarria attempts to excuse his dilatory filings because he has a limited understanding of English, that is not a valid basis for equitably tolling the one-year deadline. See United States v. Montano, 398 F.3d 1276, 1280 n.5 (11th Cir. 2005).

The United States' Motion to Dismiss 28 U.S.C. § 2255 Motions as Time-Barred (Docket Entry No. 43 in Crim. No. H-01-897) is **GRANTED**, and the three § 2255 motions will be dismissed with prejudice in separate final judgments.

SIGNED at Houston, Texas, on this 19th day of October, 2005.



SIM LAKE
UNITED STATES DISTRICT JUDGE